

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,

Case No. 2:22-cr-00142-RFB-BNW

5 Plaintiff,

ORDER

6 v.

7 MEELAD DEZFOOLI,

8 Defendant.
9

10 The Government filed a motion on October 6, 2023, alleging that Defendant, Meelad
11 Dezfooli, had violated conditions of his pretrial release. ECF No. 64. Mr. Dezfooli responded
12 October 19, 2023. ECF No. 66. The Court held a hearing on October 23, 2023.¹ Mr. Dezfooli
13 filed a supplemental brief on October 24, 2023. ECF No. 68. The Government filed a
14 supplemental brief on October 25, 2023. ECF No. 71. This Court held two more hearings on
15 October 25 and 26, 2023. ECF Nos. 72 and 75. In accordance with this Court's Order on October
16 26, 2023, the parties filed supplemental briefs on November 1, 2023. ECF Nos. 77 and 78. An
17 additional supplement was filed by the Government alleging more violations of pre-trial release
18 since the original motion to revoke was filed. ECF No. 82. Mr. Dezfooli responded. ECF No. 83.

19 As explained in detail below, this Court finds the Government has met its burden in this
20 case, warranting the detention of Mr. Dezfooli. This Court has not considered the briefs at ECF
21 No. 82 and 83 in making this decision given those are new allegations for which no proof has
22 been adduced.

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26 ¹ Mr. Dezfooli had no objection to the Government proceeding by way of proffer. In addition, this Court was
27 incorrect in its belief that the hearing could not proceed in such manner. *United States v. Davis*, 845 F.2d 412, 415
28 (2d Cir. 1988) (holding it was not an abuse of discretion for the district court to permit the government to proceed by
proffer alone).

1 **I. Procedural background**

2 An Indictment was filed on June 22, 2022, charging Mr. Dezfooli with Bank Fraud,
3 Money Laundering, and Monetary Transactions in Criminally Derived Property. The Indictment
4 alleges Mr. Dezfooli defrauded financial institutions of \$11.2 million by lying on application
5 forms to obtain funds from the COVID-19 relief Paycheck Protection Program (PPP), and that he
6 concealed and spent the fraudulently obtained money through a series of transactions.²

7 Mr. Dezfooli made his initial appearance in court on July 11, 2022, and was released
8 subject to conditions.

9 On February 17, 2023, Pretrial Services filed a Petition to Revoke Mr. Dezfooli's release.
10 ECF No. 50. On March 2, 2023, this Court held a hearing and found Mr. Dezfooli had violated
11 conditions of release by not providing certain bank statements to Pretrial Services. ECF No. 52.
12 After clarifying what was expected of him, Mr. Dezfooli was continued on release. *Id.*

13 The Government is now moving to revoke Mr. Dezfooli's release. ECF No. 64. As
14 relevant here, Mr. Dezfooli's release conditions included (1) not violating any federal , state, or
15 local laws; (2) no gambling; and (3) not transferring, assigning, disposing, removing, concealing,
16 pledging as collateral, wasting or destroying property with the effect of hindering, delaying, or
17 defrauding the United States and not devaluing property worth more than \$5000 absent a court
18 order and without the prior approval of Pretrial Services. ECF No. 13 (PR Bond). The
19 Government alleges that (1) there is probable cause to believe Mr. Dezfooli violated federal law
20 by engaging in money laundering and (2) there is clear and convincing evidence that he also
21 violated the remaining two conditions.

22 **II. Analysis**

23 18 U.S.C. § 3148 applies to revocations of pretrial release. The statute requires that the
24 Court enter an order revoking and detaining the Defendant if it,

25 (1) finds that there is--
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28 ² These loans are guaranteed by the Small Business Administration.

1 (A) probable cause to believe that the person has committed a Federal, State, or local
2 crime while on release; or

3 (B) clear and convincing evidence that the person has violated any other condition of
4 release;

5 and

6 (2) finds that--

7 (A) based on the factors set forth in section 3142(g) of this title, there is no condition or
8 combination of conditions of release that will assure that the person will not flee or pose a danger
9 to the safety of any other person or the community;

10 or

11 (B) the person is unlikely to abide by any condition or combination of conditions of
12 release.

13 18 U.S.C. § 3148.

14 That statute also provides:

15 If there is probable cause to believe that, while on release, the person committed a
16 Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of
17 conditions will assure that the person will not pose a danger to the safety of any other person or
18 the community.

19 *Id.*

20 This statute has been construed to involve a two-step process. At the first step, the Court
21 must determine whether there is “probable cause to believe that the person has committed a
22 Federal, State or local crime while on release,” or whether there is “clear and convincing evidence
23 that the person has violated any other condition of release.” *Id.* § 3148(b)(1). The burden of proof
24 at this step is on the government. *United States v. Petersen*, No. CRM 2008-0022, 2009 WL
25 1514402, at *1 (D.V.I. May 29, 2009).

26 At the second step, the Court “shall” enter an order revoking pretrial release if it finds
27 either that “based on the factors set forth in section 3142(g) ... there is no condition or
28 combination of conditions of release that will assure that the person will not flee or pose a danger

1 to the safety of any other person or the community” or that “the person is unlikely to abide by any
 2 condition or combination of conditions of release.” 18 U.S.C. § 3148(b)(2). Several courts have
 3 previously found that “[t]he determination of whether there is no condition or combination of
 4 conditions of release that will assure that Defendant will not flee or pose a danger to the safety of
 5 any other person or the community or that he is unlikely to abide by any condition or combination
 6 of conditions of release under section 3148(b)(2) may be established by a preponderance of the
 7 evidence.” *United States v. Patterson*, No. 1:19-CR-00230-DAD-BAM-1, 2020 WL 6200164, at
 8 *9 (E.D. Cal. Oct. 22, 2020) (citing *United States v. Gotti*, 794 F.2d 773, 778 (2d Cir. 1986); see
 9 also *United States v. Damato*, No. 2:20-MJ-00221-DJA-1, 2020 WL 2088100 * at 2 (D. Nev.
 10 Apr. 29, 2020) (noting “the Second Circuit has ... [held] ‘findings made under section 3148(b)(2)
 11 may be established by a preponderance of the evidence[,]’ ” and that “[t]he analysis and rationale
 12 as to why the government's burden of proof is a preponderance of the evidence under § 3148 in
 13 *Gotti* is persuasive to this Court.”).

14 If the Government establishes probable cause to believe the individual “committed a
 15 Federal, State, or local felony” while on pretrial release, then “a rebuttable presumption arises that
 16 no condition or combination of conditions will assure that the person will not pose a danger to the
 17 safety of any other person or the community.” *Id.* § 3148(b).

18 The Tenth and D.C. Circuits have held that the presumption under § 3148 is to be applied
 19 in the same manner as it is applied under § 3142. *United States v. Cook*, 880 F.2d 1158 (10th Cir.
 20 1989); *United States v. Manafort*, 897 F.3d 340 (D.C. Cir. 2018). That is, once the presumption
 21 that no conditions can be fashioned arises, the burden of production—but not persuasion—shifts
 22 to the Defendant. *Cook*, 880 F.2d at 1162. The burden of production “is not heavy...but in order
 23 to rebut [it], the defendant must produce some evidence.” *Id.* Once Defendant meets the burden of
 24 production, the presumption “remains in the case as an evidentiary finding militating against
 25 release, to be weighed along with other evidence relevant to factors listed in § 3142(g).” *United*
 26 *States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008).

27 Lastly, if there is probable cause to believe the released defendant has committed a crime,
 28 “he may thereafter be detained upon a finding, by only a preponderance of the evidence, that no

conditions of release will guard against flight or dangerousness or that the person is unlikely to abide by any release condition.” *United States v. Gotti*, 794 F.2d 773 (2d Cir. 1986).³

A. Findings

i. There is probable cause to believe Mr. Dezfooli engaged in money laundering, thereby violating federal law

Condition No. 1 states: “The defendant must not violate federal, state, or local laws while on release.” ECF No. 13.

The Government argues there is probable cause to believe Mr. Dezfooli engaged in money laundering when he sold five properties it alleges were acquired with fraudulently obtained PPP loans.

The essential elements of money laundering under 18 U.S.C. § 1957 include the following: (1) the defendant knowingly engaged or attempted to engage in a monetary transaction; (2) the defendant knew the transaction involved criminally derived property; (3) the property had a value greater than \$10,000; (4) the property was, in fact, derived from a specified unlawful activity [including bank fraud]; and (5) the transaction occurred in the United States. Ninth Cir. Model Crim. Jury Instr. 8.150.

Probable cause exists where the “available facts suggest a fair probability that the suspect has committed a crime.” *Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1094 (9th Cir. 2006); *see also United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir. 2011) (“Probable cause means only a ‘fair probability,’ not certainty, and requires consideration of the totality of the circumstances.”).

This Court finds there is probable cause to believe Mr. Dezfooli engaged in money laundering.

As to the first element, the Government proffered (and Mr. Dezfooli does not contest) he sold the five properties in question.

³ The Ninth Circuit has not spoken on this issue. The analysis and rationale as to why the government's burden of proof is a preponderance of the evidence under § 3148 in *Gotti* is persuasive to this Court.

1 As to the second element, there is evidence that Mr. Dezfooli knew the transaction
2 involved criminally derived property. To begin, absent fraud on the grand jury or some similar
3 process flaw, a grand jury indictment conclusively demonstrates probable cause at the time of the
4 indictment. *See Kaley v. United States*, 571 U.S. 320, 328 (2014) (citing *Gerstein v. Pugh*, 420
5 U.S. 103, 117 n.19 (1975)). Here, the Indictment alleges Mr. Dezfooli made false representations
6 to obtain PPP loans. Thus, there is probable cause to believe that loans were fraudulently
7 obtained. The Government proffered that the sale of the five properties in question were traced
8 back to PPP loan proceeds.⁴ Thus, there is probable cause to believe that Mr. Dezfooli knew the
9 transactions involved criminally derived property.

10 Turning to the third element, the properties all had a value greater than \$10,000.

11 Fourth, as mentioned above, the Government proffered that these properties were
12 purchased from proceeds of PPP loans.

13 And last, the transactions occurred in the United States.

14 This Court considered Mr. Dezfooli's proffer that that *he did not know* the transactions
15 involved *criminally derived property* (elements No. 2 and 4), which is consistent with his "not
16 guilty" plea. As explained above, the Indictment serves as probable cause to believe Mr. Dezfooli
17 made fraudulent representations to obtain the loans.

18 This Court also considered that Mr. Dezfooli spoke with Pretrial Services and was told he
19 could sell properties not listed in the Indictment "so long as it was lawful." Mr. Dezfooli argues
20 he relied on Pretrial Services' statement when deciding to sell these properties, thus mitigating his
21 actions. But the operative phrase Pretrial Services used is "so long as it was lawful." Even if this
22 Court were to credit his reliance on Pretrial Services for the actions he undertook, such reliance
23 does not bear *on the probable cause analysis*. Instead, as suggested by defense counsel, it may
24 play a role in his *defense* should a Superseding Indictment be filed charging this specific conduct.

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26 ⁴ Mr. Dezfooli argues that since only a proffer (and no other proof) was offered showing that the proceeds of the sale
27 of the properties could be traced to criminally derived property, this Court should limit the amount of weight it puts
28 on the proffer. But the advantage of proceeding by way of proffer is that the Government need not put any other
proof. If Mr. Dezfooli wanted to challenge the accuracy of this proffer (such that this Court could determine how
much weight to give it) he could have requested the opportunity to examine witnesses. He did not do so.

1 **ii. There is clear and convincing evidence that Mr. Dezfooli gambled**

2 Condition No. 70 states: “The defendant shall refrain from gambling...” ECF No. 13. The
3 Court finds by clear and convincing evidence that Mr. Dezfooli gambled, in violation of his
4 release conditions. *See* Gov. Ex. 7, 8, 11 and 12.

5 **iii. There is no clear and convincing evidence that Mr. Dezfooli violated the**
6 **remaining condition**

7 Condition No. 80 states: “Defendant agrees not to transfer, assign, dispose, remove,
8 conceal, pledge as collateral, waste or destroy property with the effect of hindering, delaying, or
9 defrauding the United States or victims. Defendant otherwise shall not devalue any property
10 worth more than \$5000 absent further court order, without the prior approval of Pretrial
11 Services.” ECF No. 13.

12 **a. Not transferring, assigning, disposing, removing, concealing, pledging as**
13 **collateral, wasting or destroying property with the effect of hindering,**
14 **delaying, or defrauding the United States**

15 Mr. Dezfooli conceded he sold the properties in question, thus transferring them. The
16 question is whether the sale had “the effect of hindering, delaying, or defrauding the United
17 States.” For this Court to find by clear and convincing evidence that the sale had this effect, this
18 Court would first have to find by clear and convincing evidence that the properties sold were
19 acquired with the proceeds of fraudulently obtained PPP loans. As mentioned above, the
20 Indictment serves as probable cause to believe Mr. Dezfooli fraudulently obtained PPP loans. The
21 Government proffered these properties were acquired with the proceeds from such fraudulently
22 obtained loans. Mr. Dezfooli proffered no fraud was at play. In the absence of additional
23 evidence, this Court cannot find there is *clear and convincing evidence* that the sale of these
24 properties would have the stated effect.⁵

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⁵ This Court stated during the October 26, 2023, hearing that it had found Mr. Dezfooli had violated this portion of the condition. Upon further reflection, and based on the stated reasons above, this Court does not believe he has.

1 **b. Devaluing property worth more than \$5000**

2 This Court does not find that Mr. Dezfooli violated this condition by clear and convincing
3 evidence given his understanding of the condition. Pretrial Services explained during the hearing
4 that the example provided to Mr. Dezfooli was that he could not sell a car for \$5 if the acquired
5 price was \$500. Thus, the Government has not met its burden to show that the sale of the
6 properties would fall within this condition.

7 **B. Application of § 3148 (1)(A) + presumption**

8 As stated above, this Court finds the Government has met its burden of showing there is
9 probable cause to believe Mr. Dezfooli committed money laundering while on release. Thus, a
10 rebuttable presumption arises that no condition or combination of conditions will assure that, as
11 relevant here, he will not pose an economic danger to the community.⁶ *United States v. Reynolds*,
12 956 F.2d 192 (9th Cir. 1992) (holding that danger to the community may encompass pecuniary or
13 economic harm).

14 The Court finds that Mr. Dezfooli has met his burden of production, which is not a heavy
15 one, by proffering he has no other properties to sell. Thus, this Court moves on to the same
16 analysis it would under § 3142: it weights the factors listed in § 3142(g) along with the
17 presumption, which “remains ... as an evidentiary finding militating against release.” *Hir*, 517
18 F.3d at 1086.

19 **i. Nature and circumstance of offense charged**

20 Mr. Dezfooli is charged with several counts of Bank Fraud, Money Laundering, and
21 Monetary Transactions in Criminally Derived Property. The amount in question exceeds \$11
22 million. These are undoubtedly serious offenses for which Mr. Dezfooli faces up to 30 years of
23 imprisonment. *See* 18 U.S.C. § 1344.

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⁶ As made clear by the Government during the October 26, 2023, hearing, the only issue is whether conditions of release can be fashioned to address the issue of economic danger to the community.

1 As explained above, this Court has also found probable cause to believe Mr. Dezfooli
2 continued to engage in criminal conduct while on pretrial release. Specifically, that he sold
3 properties acquired with proceeds from the PPP loans.

4 **ii. Weight of the Evidence**

5 This Court does not have much information in this regard as the Government did not
6 originally move for detention. Based on the proffers made during the hearings, it appears that the
7 Government has considerable evidence against Mr. Dezfooli. This Court acknowledges this is the
8 least important factor. *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985).

9 **iii. History and Characteristics of Mr. Dezfooli**

10 Mr. Dezfooli has strong ties to this community—he has lived here since the late nineties.
11 He has lived with his mother and sister, at the same residence since 2003 or 2004, and is able to
12 reside there. He also has additional family in the community. While he has a passport, it has been
13 surrendered to Pretrial Services. He also reports being gainfully employed.

14 He gambles, and continued to do so while on release even though he was prohibited from
15 doing so. Of note, evidence was presented that (in addition to gambling himself) Mr. Dezfooli
16 was using other individual's player's cards and giving money to others to ostensibly gamble for
17 him.

18 He does not appear to have any current health issues.

19 As far as his criminal history is concerned, most of it is stale (including his failure to
20 appear in 2015) and is otherwise not particularly concerning.

21 While he was in possession of some firearms, those have been surrendered.

22 **iv. Danger to Any Person or the Community**

23 As noted above, this Court found probable cause that Mr. Dezfooli engaged in money
24 laundering by selling five properties (for \$2.3 million) that were acquired from the PPP loans
25 while on supervision. Mr. Dezfooli was aware that he was not to sell the properties listed on the
26 Indictment given the allegation that those properties had been purchased with ill-gotten gains.
27 The Government proffered that all properties (including those that were not listed in the
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1 Indictment) were purchased in the same manner. Yet, Mr. Dezfooli chose to sell the properties
2 not listed in the Indictment and cash out, thereby continuing to engage in criminal conduct.

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4 There is not much guidance by the Ninth Circuit regarding the type of conduct that is
5 encompassed by the term “economic harm.” This Court agrees with *United States v. Madoff*, in
6 that the dissemination of assets likely does not rise to the required level to be cognizable as
7 “economic harm.” 586 F. Supp. 2d 240 (S.D.N.Y. 2009). But this case involves more than
8 disseminating assets: there has been a finding of probable cause that Mr. Dezfooli engaged in
9 additional criminal acts and there is evidence suggesting a pattern of deceptive practices, which
10 includes the failure to record the real estate deeds in a timely fashion to avoid detection of the
11 properties at issue. In addition, and as discussed more fully below, this case is in a different
12 procedural posture than the *Madoff* case.

13 This Court notes there is a crucial difference between § 3142 and § 3148. The former
14 states that the conditions need only “*reasonably* assure,” as relevant here, the economic safety of
15 the community. In contrast, § 3148 states that the Court “shall enter an order of revocation and
16 detention” if no combination of conditions “will *assure*,” as relevant here, the economic safety of
17 the community. Thus, the question here is whether it is “more likely than not” that no conditions
18 can be fashioned to “assure” the economic safety of the community.

19 This Court also notes that at the time the hearing took place on October 23, 2023, Pretrial
20 Services recommended that Mr. Dezfooli be admonished and continued on the same conditions of
21 release. As explained during the hearing on October 25, 2023, that recommendation did not
22 consider whether Mr. Dezfooli had (or had not) engaged in money laundering while on release.
23 That was based on the fact the Government requested the revocation hearing (not Pretrial
24 Services) and had not investigated the allegation that he had committed money laundering. At the
25 October 25, 2023, hearing, Pretrial Services did not take any position as to whether conditions
26 could be fashioned in this case.

27 After weighing the factors listed in § 3142(g) along with the presumption, which
28 “remains...as an evidentiary finding militating against release”, this Court finds the Government

1 has met its burden to show by a preponderance of the evidence that no combination of conditions
2 will *assure* the economic safety of the community. Even if Mr. Dezfooli has no more properties
3 to sell, he has demonstrated the ability and willingness to conceal information to continue
4 profiting from the alleged crime (by committing new crimes) such that no combination of
5 conditions will assure he will not pose an economic danger.


6 Given this finding, this Court need not engage in any other findings to find that Mr.
7 Dezfooli must be detained.

8 **D. Conclusion**

9 **IT IS ORDERED** that the Government's Motion to Revoke Pretrial Release and Detain
10 Defendant Pending Trial (ECF No. 64) is **GRANTED**;

11 **IT IS FURTHER ORDERED** that Mr. Dezfooli will be detained in this case pending
12 trial. He is to self-surrender to the United States Marshals' Office by noon on November 20,
13 2023.

14 DATED: November 16, 2023.

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17 BREND A WEKSLER
18 UNITED STATES MAGISTRATE JUDGE
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